

Virginia Housing Commission Report on 2006 Senate Bill 145 (Deeds)

On October 26, 2006, the Virginia Housing Commission's Mortgage Work Group met to review and report on Senate Bill 145 as requested by the House Commerce and Labor Committee via letter from Chairman Harvey Morgan.

The meeting was chaired by Delegate John Cosgrove, Commission member.

Workgroup members present:

<u>Name</u>	<u>Organization</u>
Terrie Suit	House of Delegates
John Cosgrove	House of Delegates
Bob Hull	House of Delegates
Chris Beale	Mortgage Brokers Association
Phil Boykin	Virginia Bankers Association
Bob Bradshaw	Independent Ins. Agents of VA
Connie Chamberlain	Housing Opportunities Made Equal
Eric Gregory	Office of the Attorney General
Susan Hancock	State Corporation Commission
Judson McKellar	VHDA
Shaffer Oglesby	Virginia Association of Realtors
Steve Pearson	Virginia Trial Lawyers Association
John Powell	Virginia Association of Realtors
Michele Watson	VHDA

Additional participants in person or by correspondence were:

<u>Name</u>	<u>Organization</u>
Creigh Deeds	Senate
Tom Dewey	Virginia Association of Mortgage Brokers
Travis Hill	Virginia Mortgage Bankers Association
Kurt Pfothnauer	Mortgage Bankers Association
Paul Richman	Mortgage Bankers Association
Vicki Vidal	Mortgage Bankers Association
Chris Whitehurst	

The bill summary as proposed to the House Committee on Commerce and Labor is as follows:

Mortgage loan servicing practices; penalties. Prohibits persons that service mortgage loans from taking certain actions with respect to mortgage loans, including failing to apply promptly to the loan payments made in accordance with the terms of the loan agreement and taking actions for the primary purpose of creating a default under the terms of a mortgage loan. A violation constitutes a Class 1 misdemeanor. The State Corporation Commission is authorized to conduct investigations. The measure does not apply to banks or savings institutions or their subsidiaries or affiliates.

Senator Deeds provided the following explanation for his submission of the legislation:

Senator Deeds had a constituent whose mortgage loan was repeatedly subject to foreclosure over the course of five years. The constituent represented that she always made her mortgage payments on time. No remedy existed to address her situation other than to go to court. She sought assistance through Legal Aide.

Senator Deeds provided a news article which further represented that his constituent obtained her mortgage in 1998 from First Greensboro Mortgage in Roanoke, Virginia. The mortgage servicing was sold and in October of 2000 ended up with Fairbanks Capital Corporation of Salt Lake City, Utah. Fairbanks was later known as Select Portfolio Servicing. During this time there were protracted and confusing communications and multiple incidental charges for late payments, foreclosure advertisements and legal fees related to foreclosure actions which when applied caused the borrowers payments to be treated as late by the mortgage loan servicing company. The news article represents that Legal Aide demanded a full accounting of the payment history and charges on the mortgage under the Federal laws providing for obtaining this information. The detailed accounting was provided. In the midst of receiving this information from Fairbanks the loan was sold to EMC who began new foreclosure proceedings. Legal aide sought an injunction to halt the foreclosure sale. A court order was entered stopping the foreclosure. Two additional mortgage payments were subsequently returned to the borrower with the explanation that they were insufficient to fully reinstate the loan and warning that the foreclosure process would continue. Legal Aide has now worked with the trustee of the mortgage, an Arlington lawyer and has been assured that everything is finally straight.

The article also noted that Fairbanks subsequently paid more than \$40 million in restitution to consumers as a result of suits brought against it by the Federal Trade Commission and HUD.

Problem to be solved:

Senator Deeds stated that he introduced SB 145 to "curb such predatory practices in our mortgage industry."

Funding of the regulatory program established under SB 145:

In SB 145 powers are granted to the State Corporation Commission to bill the actual costs of examination including travel and reasonable living expenses incurred on account of its examination, supervision and regulation to the mortgage servicer subject to examination. These charges would be required to be paid by the servicer regardless of the findings of the examination.

Background information regarding mortgage lending and servicing in Virginia was provided as follows:

Mortgage loans are originated by a variety of lending institutions to include: Banks, credit unions, thrifts, Virginia licensed mortgage lenders (who fund the loans in their own name) and Virginia licensed mortgage brokers (do not fund the loans, but act on behalf of lenders and collect a fee for services from the borrower and or the lender).

The right to service a mortgage loan can be retained by the originating lender or released/sold to a servicing company. It is common practice that servicing is released and sold by the majority of smaller mortgage lenders or lending institutions. During the life of a mortgage, the servicing can be sold multiple times. Consequently, mortgage loans on property located in Virginia are frequently serviced by out-of-state entities or by federally regulated institutions (including wholly owned subsidiaries of banks) out of the reach of Virginia regulatory schemes due to federal pre-emption.

Current regulation of mortgage loan servicing:

There is currently regulation at the federal level for mortgage loan servicing in the Real Estate Settlement and Procedures Act (RESPA). Additionally, there is the Federal Trade Commission Act, the Fair Debt Collection Practices ACT (FDCPA), and the Fair Credit Reporting Act (FCRA). In the case of Fairbanks, the mortgage service in question with Senator Deeds' constituent, charges were filed, according to the FTC website, under all of these acts as follows:

Federal Trade Commission Act Violations : The FTC alleged that, in servicing loans, Fairbanks frequently: failed to post consumers' mortgage payments in a timely and proper manner, and then charged consumers late fees or additional interest for failing to make their payments "on time"; charged consumers for placing casualty insurance on their loans when insurance was already in place; assessed and collected improper or unwarranted fees, such as late fees, delinquency fees, attorneys' fees, and other fees; and misrepresented the amounts consumers owed.

Fair Debt Collection Practices Act (FDCPA): The complaint also alleges that Fairbanks violated several provisions of the FDCPA, in connection with collecting loans that were in default when Fairbanks obtained them. Specifically, the FTC alleges that the defendants falsely represented the character, amount, or legal status of consumers' debts; communicated or threatened to communicate credit information which was known or which should have been known to be false, including the failure to communicate that a debt was disputed; used false representations or deceptive means to collect or attempt to collect a debt, or to obtain information concerning a consumer; collected amounts not authorized by the agreement or permitted by law; and failed to validate debts.

Fair Credit Reporting Act (FCRA): The FTC alleges that the defendants furnished information about each consumer's payment status to consumer reporting agencies when they knew or consciously avoided knowing that the information was inaccurate. Also, when consumers informed the defendants that they disputed the reported information, the defendants did not report the dispute to the consumer reporting agencies.

Real Estate Settlement Procedures Act (RESPA): RESPA is a federal statute that requires loan servicers to respond to borrowers' written requests about their loans and to make timely insurance and property tax payments on behalf of borrowers and otherwise properly administer their escrow accounts. In the complaint, HUD alleges that the defendants failed to timely and adequately acknowledge, investigate, and respond to borrowers' written requests for information about the servicing of their loans and escrow accounts. HUD also alleges that the defendants failed to make timely payments of escrow funds for insurance premiums and property taxes.

Other servicing oversight provisions:

There are also rules and guidelines for servicing mortgage loans issued by the entities which ultimately own the majority of mortgage loans. These are primarily bond issuers FNMA, FHLMC and GNMA, as well as insurers: Veterans Administration (VA) and the Federal Housing Administration (FHA). These entities issue servicing rules which organizations servicing their loans are required to follow.

Key points of discussion during the work group meeting:

1. Do consumers have adequate protections under the law?

There was some disagreement on this point. The major area of concern, however, was how consumers could seek relief. While there is significant regulation at the federal level there was concern that obtaining relief is more difficult for the consumer than some stakeholders believe it would be at the state level.

2. Application of insurance premium payments.

There was significant discussion regarding servicers, who hold insurance escrow accounts, making payments on homeowners' insurance policies on time. It was

pointed out, however, that Virginia Code § 6.1-2.8 requires that lenders, who have sufficient funds in escrow but do not make the required insurance payments are fully liable for any charges or loss as a result of the property being uninsured.

Key points represented by stakeholders during the work group meeting:

Significant regulation exists at the federal level pertaining to mortgage loan servicing.

Seeking relief at the federal level is more difficult for consumers than seeking relief at the State or local level.

New regulatory schemes would be financially burdensome to mortgage servicers with those costs being passed on to consumers.

The examples of servicing problems presented during the work group eventually found resolution under federal laws.

A significant portion of mortgage servicers would be excluded from SB145 due to their organization as a bank or thrift.

The SCC is funded via licensing and examination fees. Most mortgage servicers are not licensed mortgage lenders or brokers in Virginia as they are not originating mortgages or are affiliated with a bank or thrift exempt from licensure requirements. Consequently, the only funding identified in SB 145 would require servicers who are examined to pay all of the costs of examination including travel expenses and living expenses regardless of the outcome of the exam. Many servicers are located outside of Virginia significantly affecting the cost of examination and administration of this regulatory scheme by the SCC. These costs would be passed back to the consumer through increased mortgage pricing.

Final analysis:

Consumers need assistance navigating the complex laws and regulations currently in place to protect them from bad actors in the mortgage servicing industry. SB 145 adds a new mortgage servicing regulatory scheme at the state level. There is significant disagreement as to whether this new regulation will provide the consumer with a better avenue of relief than the laws and regulations currently in place at the federal level.